

# IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

**Constitutional Petition No. D -663 of 2021**

Danish Sanober

*Versus*

Karachi Port Trust (KPT) & 05 others

Date of hearing

& decision : 08.02.2021

Mr. Muhammad Imran Meo, advocate for the petitioner.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J.** - Through the instant petition under Article 199 of the Constitution 1973, the petitioner has called in question his termination from service order dated 10.06.2019 issue by respondent-Karachi Port Trust (KPT).

2. The petitioner has assailed the disciplinary action of the Respondent-Karachi Port Trust (KPT), whereby he was terminated from service vide order dated 10.06.2019 with strong allegations of misconduct.

3. At the very outset, we inquired from learned counsel as to how the instant Petition is maintainable against the disciplinary proceedings initiated against him, which relates to the terms and conditions of his service and he has the remedy under the law to assail the decision adversely affecting him before the appellate forum.

4. Mr. Muhammad Imran Meo, learned counsel for the petitioner, has submitted that the impugned disciplinary proceedings were the outcome of malice on the part of respondent-KPT as his service was dispensed with during the pendency of earlier C.P No.D-2822/2019, thus the entire proceedings carried out by the respondents are null and void and have no legal force in the eyes of law, thus liable to be quashed. He lastly prayed for allowing the petition.

5. We have heard the learned counsel for the petitioner on the issue of maintainability of the instant petition.

6. It appears from the record that the petitioner in pursuance of his application dated 22.5.2012, was appointed as Security Guard in respondent-KPT on 6 months' probation vide appointment letter dated 23.08.2012.

However, the record does not reflect that his service was confirmed by the respondents. On 5.6.2015, he was nominated as an accused in a criminal case, arising out of FIR No.279/2015 registered for an offense under Section 4/5 Explosive Substance Act read with Section 7 ATA 1997 at PS Zaman Town. He remained absent without any authorization from the day the FIR was registered against him. Between 05.06.2015 to 10.06.2019. Finally, his service was terminated by the respondent-KPT vide letter dated 10.06.2019 on the allegation that he being an activist of a political party was involved in heinous crimes. Per petitioner, he was subsequently acquitted from the charge by the learned Anti-terrorism Court vide judgment dated 19.7.2017. A bare perusal of termination from service order dated 10.06.2019 shows that he was charged with the following allegations of Misconduct:

*“The Security Agencies have “Un-Verified” your character and recommended not suitable for Government Job, therefore, the Competent Authority after going through with the available record/documents took action in exercise of powers conferred under the rules ad approved the imposition of Major Penalty i.e. “Termination from Service” with immediate effect accordingly.”*

7. We have reservations about the appointment of the petitioner as a Security Guard in the Port Security Force, prima-facie his appointment was made without codal formalities. Even his service was not confirmed against the post of Security Guard. It is well-settled law that Confirmation of probation would be subject to the satisfactory completion of the probation. Expiry of the period of probation, therefore, does not entitle him with a right to a deemed confirmation automatically. In the circumstances, the documents relied upon by the petitioner’s counsel is of no help to the case of the petitioner, for the reason that the petitioner has approached this court based on the principle of equity, however, it is well-settled law that a person seeking equity must do equity and come to the court with clean hands.

8. In the present case petitioner has failed to point out that he was appointed against the aforesaid post in due course of law, as such we cannot subscribe to his viewpoint as agitated by him in the present proceedings.

9. Coming to the case registered against him, though the criminal case came to an end on 19.7.2017 and he was acquitted from the charges; however since his absence from duty from the date of purported appointment was/is unexplained throughout his service; and, without grant of leave by the competent authority.

10. To seek condonation of absence during his absence period would amount to putting a premium on such act. If this is made a ground for condonation of

absence, then in every case where the civil/public servant is involved in a criminal case and remained absent, his absence from duty would have to be condoned. The act of absence from duty or being a fugitive from the law and subsequent arrest in a criminal case cannot be regarded as a reasonable ground to explain and condone absence.

11. Learned counsel for the petitioner was asked to show as to whether in any case, this Court has condoned the absence from duty in the writ petition and the departmental action was set aside, he was unable to satisfy this Court on this point.

12. We may observe here that, indeed the writ jurisdiction of this Court is not meant to be exercised to restrain the competent authority from taking disciplinary action under law against a public Servant against whom prima facie evidence showing his involvement in the serious charges of misconduct was available, for the reason that any such direction would be disharmonious to the principle of good governance and canon of service discipline. Rather causing undue interference to hamper the smooth functioning of the departmental authorities, more particularly in Karachi Port Trust. Since we do not see malice or ulterior motives on the part of respondent-KPT and/or violation of the principles of natural justice. In such circumstances, we would not like to exercise our discretion in his favour at this stage. Besides respondents have leveled serious allegations against the petitioner about his appointment at the back door, and subsequent involvement in criminal activities, his absence from duty due to certain political/ criminal activities as discussed supra. Keeping in view the above-mentioned facts and circumstances of the case, we do not see any infringement of the right of the Petitioner which could be called in question by way of Writ Petition.

13. In light of the above facts and circumstances of the case, the instant petition is found to be meritless and is accordingly dismissed in *limine* along with the listed application (s).

14. These are the reasons for our short order dated 08.02.2021 whereby we have dismissed the instant petition.

---

J U D G E

---

J U D G E